IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No 24 of 2001
in
COMPANY APPLICATION No 127 of 2001
in
COMPANY PETITION No 265 of 2000

with

CIVIL APPLICATION No 170 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HORST KURVES GMBH

Versus

ESSAR OILS LTD.

Appearance:

1. O.J.APPEAL No. 24 of 2001
MR MJ THAKORE with MS JASPREET SAREEN & MR PC KAVINA for the appellant.
NANAVATI ASSOCIATES for Respondent No. 1

2. CIVIL APPLICATION No. 170 of 2001
MR PC KAVINA for the applicant
NANAVATI ASSOCIATES for the Respondent

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Admit. With the consent of the learned counsel for the parties, the appeal has been finally heard over a period of two days and is being disposed by this judgment.

2. This appeal arises from the order dated 24-4-2001 passed by the learned Company Judge in Company Application No.127 of 2001 in Company Petition No.265 of 2000 by which the learned Judge rejected the application filed by the appellant-petitioning creditor for a direction to the respondent-company to give inspection of certain documents and for production thereof.

3. The main company petition i.e. Company Petition No.265 of 2000 has been filed by the appellant for winding up of the respondent -company - Essar Oils Ltd. on the ground that the amounts due and payable by the respondent-company to the appellant have not been paid in spite of the deed of guarantee given by the respondent-company in favour of the appellant. It is the case of the appellant that in accordance with the contract dated 25-6-1997 entered into between the respondent and ABB Lummus Globa B.V. (hereinafter referred to as `the LGV'), (a company incorporated under the laws of The Netherlands), the LGV agreed to supply to the respondent non-Indian sourced equipment and materials required by the respondent-company for the Crude Refinery set up by the said respondent-company at Vadinar in Gujarat. In order to perform the said obligations, LGV entered into a sub-contract dated 16-4-1999 with certain requisitions with the appellant for procurement of valves, fittings, flanges etc. (hereinafter referred to as `the goods'). It is further the case of the appellant that since the respondent-company was in financial difficulties, in view of the request made by the respondent-company and LGV in turn to the appellant to accommodate the respondent-company, the appellant agreed to extend credit facility for a period of 90 days from the date of shipment of goods to an amount of DM 18 Million approximately, equivalent to US$ 10 Million subject to the respondent-company giving an irrevocable and unconditional corporate guarantee to the appellant. Accordingly, vide a Deed of Undertaking dated 21-4-1999

between the respondent-company and the appellant, the respondent-company unconditionally and irrevocably agreed that in the event of any failure on the part of the respondent-company to make payment to LGV as due along with the interest, within the said period of 90 days from the date of shipment, the respondent-company will on simple demand from the appellant, pay the appellant the value of the said goods under the sub-contract upto a sum not exceeding US$ 10 Million along with applicable interest without any demur, reservation, recourse or protest. It is further the case of the appellant that in spite of repeated requests made by the appellant and LGV, the respondent-company failed and neglected to pay the LGV, the sum aggregating to US $ 7,006,332 in respect of the sub-contract aforesaid within the prescribed period and, therefore, the appellant called upon the respondent-company to make the said payment with interest but the respondent-company kept on avoiding and neglecting to make the said payment to the appellant. Finally, the appellant sent a letter dated 30-6-2000 to the respondent-company reiterating its demand. However, by a fax message dated 7-7-2000, the respondent-company stated, inter-alia, as under:

"We are confident that we would be able to arrive at a mutual agreement amongst all concerned to the proposal for restart of the Project within a short period - hopefully early August.

You would kindly appreciate that payments for the various project facilities including the equipment supplies can be released only there after and we therefore request you to kindly bear with us for some more time."

Ultimately, the appellant gave statutory notice dated 4-8-2000 calling upon the respondent-company to make the payment of the amounts, failing which the appellant will have no option but to initiate legal proceedings against the respondent-company.

The respondent-company replied to the said notice by letter dated 6-9-2000 refuting its liability. Under the circumstances, the appellant filed the present company petition for winding up of the respondent-company.

4. In response to the notice, the respondent-company filed its reply, inter-alia, stating as under:

The respondent -company is setting up a very

large refinery project. For implementation of the said project, the respondent-company entered into a contract dated 25-7-1997 for the work of sourcing non-Indian equipments and materials with LGV.

The total value of the supply under the said contract is approximately US $ 598 Million. LGV is to supply these materials from various international sources not necessarily from the Netherlands which was the base country of LGV. The payment procedure to be followed under the contract, was that the respondents would open Letters of Credit in favour of LGV which Letters of Credit would be utilised from time to time, to claim payments against invoices (and other shipping documents) in respect of supplies made under the said contract. It may be noted that the invoices submitted for negotiation under the Letters of Credit do not indicate the source of the supplies. Invoices are raised by LGV on the respondents, irrespective of the fact whether LGV supplied the material itself "directly" or procured the same from "other" sources. In other words, it is impossible for the Respondents to know whether the goods have come from the petitioners or from other suppliers.

The Corporate Guarantee annexed at Ex. "C" to the petition was furnished by the respondents as a comfort for LGV. It may be noted that the Corporate Guarantee actually guarantees payment by the respondents to LGV and it does not cover any failure of LGV to make corresponding payment to the appellants-petitioners.

The respondents have opened in favour of LGV various Letters of Credit to the tune of US $ 377,401,997 of which LGV has utilized for material supplied, to the extent of US $ 332,642,417 till 31-3-2000 and approximately US $ 340,546,973 till 30-11-2000.

Further it may be mentioned that the invoices and debt notes mentioned at Ex. A to the petition which are the base documents upon which the entire claim of the petitioners is standing, have never been issued to the respondents. As stated above, the respondents have no means to find out the source of the supplies which has been further made impossible, as the petitioner has not

submitted to the respondent either the details of its supplies or the copies of the invoices. It was only after the filing of the present petition that the petitioners gave inspection and supplied copies of the said invoices and the debit notes as late as in January, 2001.

(emphasis supplied)

5. Thereafter, the appellant-company through their learned advocate gave notice dated 26-3-2001 (Annexure A to the application) calling upon the learned advocate for the respondent to give inspection of the original documents referred to in the affidavit in reply filed on behalf of the respondent-company and for obtaining photo copies thereof. The notice was given in respect of the following documents:

(a) Letter of Credit opened in favour of LGV.

(b) Proof of receipts of goods in India, i.e. Invoices, Bills of Lading and Bills of Entry.

(c) Extract of Books of Accounts of the Company showing the amounts paid to and yet to be paid to LGV.

(d) Application filed by the Company with the state Govt. seeking permission under S. 29 of the Wild Life (Protection) Act, 1972 and permission (if any) granted thereunder.

6. The learned advocate for the respondent-company gave reply dated 10-4-2001. The request for inspection was turned down. Hence, the appellant-company filed Company Application No.127 of 2001 before the Company Court to direct the respondent-company to give inspection and permitting to take photo copies of the aforesaid four documents. The application came to be contested and affidavit-in-reply was filed on behalf of the respondent-company contending that the application was made for roving inquiry without any relevancy and therefore, the application deserved to be dismissed. It was also contended that there was no contract between the appellant and the respondent-company. Therefore, also inspection cannot be given.

7. After hearing the learned counsel for the parties, the learned Company Judge, by the impugned order dated 24-4-2001, rejected the application mainly on the following grounds:

Before the respondent-company can be directed to give inspection of the documents prayed for by the appellant, the appellant will have to prove that -

(i) The appellant had supplied certain goods to LGV for which it had raised invoices on LGV.

(ii) Then LGV in turn supplied those very goods to the respondent-company and also raised the invoices for the same.

(iii) Thereafter, LGV has either not received payment or having received the payment has not made the payment to the appellant-company.

The learned Company Judge than concluded that since none of these facts are before the Court, the documents which are sought for cannot be said to be relevant and/or having any bearing on the controversy involved in the company petition. In view of this reasoning, the learned Company Judge rejected the application. It is against the said order that the petitioning-creditor has come up in appeal before us.

8. When the hearing of the appeal commenced, Mr. K.S. Nanavati, learned counsel for the respondent-company raised a preliminary objection that the appeal was not maintainable under the provisions of section 483 of the Companies Act, 1956 (hereinafter referred to as `the Act').

9. Mr. Mihir Thakore, learned counsel for the appellant has made the following submissions:

9.1 The appeal is maintainable because the impugned order is not a mere procedural order but the same vitally affects the rights of the appellant who is the petitioning-creditor in a winding up petition.

9.2 The respondent-company in their initial reply dated 7-7-2001 never disputed their liability to pay the amounts in question but only pleaded for time in view of financial difficulties. In view of this conduct on the part of the respondent-company they were estopped from refusing to make payment of the dues of the appellant.

9.3.1 The learned Company Judge has erred in observing that the appellant had not proved that the appellant had supplied certain goods to LGV for which it had raised invoices on LGV. The respondent-company had asked for

inspection of all those documents and inspection was given. Those documents were not produced on the record of the company petition because they ran into about 1500 pages and the record was not to be unnecessarily burdened, especially when the respondent-company itself has admitted in its reply that inspection of the documents was given after filing of the petition. Hence there was no justification for observing that the appellant had not proved that the appellant had supplied certain goods to LGV for which it had raised invoices on LGV.

9.3.2 The respondent-company has not disputed that it had received the goods from the appellant-company. The only defence pleaded by the respondent-company is that it received the goods from the LGV and it is not possible for the respondent-company to ascertain whether the goods were supplied by LGV directly or from other sources. The endeavour of the appellant in these proceedings is to tally the goods covered by the invoices raised by the appellant on the LGV with the goods covered by the invoices raised by the LGV on the respondent-company. The respondent-company wants to avoid this situation and, therefore, the documents are not permitted to be inspected in spite of their direct relevance to the controversy involved in the company petition.

9.3.3. When the appellant is invoking the guarantee given by the respondent-company and the respondent-company has pleaded that it has made the payment to LGV, it is the duty of the respondent-company to show whether the payment has been made against the subcontract between LGV and the appellant-company.

9.4 Because the documents were in possession of the respondent-company and had direct relevance to the controversy in the petition, the appellant had demanded inspection of the documents, but the learned Company Judge required the appellant to prove certain facts which, when proved, would lead to the final orders and then the documents would not be required after that stage. In fact the documents are required before the Company petition is heard for admission.

10. On the other hand, Mr. K.S. Nanavati, learned counsel for the respondents has vehemently opposed the appeal. Apart from the preliminary contention that the order under appeal is only a procedural order and therefore, the appeal is not maintainable, it is further contended by Mr. Nanavati that an appeal lies only from an order made or a decision given in the matter

of winding up of company; hence, an appeal will not lie against an order made in a petition for winding up which is still not admitted; the matter of winding up of a company does not commence before admission of a winding up petition.

The learned counsel for the respondent-company has also opposed the appeal on merits and has submitted that the documents are not relevant to the subject matter of the petition which is for winding up. According to Mr. Nanavati, for deciding the question whether the respondent -company has lost its subtratum or whether the respondent-company is unable to pay its debts, the documents in question have no relevance. It is further submitted that it is a discretionary order passed by the learned Company Judge at an interlocutory stage and, therefore, also this appeal may not be entertained.

11. We will first take up the preliminary contention urged by Mr. Nanavati for the respondent-company that the appeal is not maintainable under sec. 483 of the Act. Section 483 reads as under:

> "483. Appeals from any order made, or decision given, in the matter of the winding up of a company by the Court shall lie to the same Court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction."

Section 202 of the Indian Companies Act, 1913 said to be analogous to the above provision, reads as under:-

> "202. Appeals from orders. Re-hearings of, and appeals from, any order or decision made or given in the matter of the winding up of a company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction."

11.1. It is the contention of the learned counsel for the respondent-company that section 202 of the Companies Act, 1913 which was in pari-materia with the provisions of section 483 of the present Act, came up for consideration before the five Judge Bench of the Apex Court in Shankarlal Agarwal vs. Shankarlal Poddar AIR 1965 SC 507 wherein the Apex Court held that appeal does not lie against procedural orders passed by the Company Court. The ratio of the said decision was culled out by

a three Judge Bench of the Apex Court in Central Bank of India vs. Gokal Chand AIR 1967 SC 799 in the following words:

"Section 202 of the Indian Companies Act, 1913 confers a right of appeal "from any order or decision made or given in the matter of the winding up of a company by the Court." In Shankarlal Aggarwal vs. Shankarlal Poddar, (AIR 1965 SC 507 at p. 514) this Court decided that these words, though wide, would exclude merely procedural orders or those which did not affect the rights or liabilities of parties."

11.2 The learned counsel has also heavily relied on the observations made by Their Lordships of the Supreme Court in paragraphs 112, 114 and 115 in Shah Babulal Khimji vs. Jayaben AIR 1981 SC 1786 wherein the Court examined the nature of interlocutory or intermediary orders against which an appeal would not lie.

11.3 In M. Manohar & Another vs. T.R. Mills Pvt. Ltd. (1997) 88 Comp. Cases 375, a Division Bench of the Karnataka High Court has also taken a similar view that an appeal under section 483 of the Act does not lie against an interlocutory order:

"An interlocutory order may not ultimately affect the rights of the parties, in the sense that the final order may go in his favour. In such a situation it is immaterial as to what happened at the interlocutory stage. it is in that sense it has to be understood that the interlocutory order cannot be challenged unless it affects the rights and liabilities of the parties. A document may be wrongly admitted by the court overruling the objections, the objector may be temporarily aggrieved by this order. But ultimately, it may so happen that the objector may succeed in the litigation, if so, it is entirely immaterial whether his earlier objection was upheld or overruled."

11.4 It is vehemently submitted that the impugned order does not determine the rights of the parties and ultimately in case the final order is adverse to the appellant, the appellant can always challenge the final order and in that appeal challenge can also be made to the impugned order rejecting the application for inspection of documents and hence the present appeal is

not maintainable and the appeal may accordingly be dismissed on this preliminary ground itself.

12. On the other hand, Mr. M.J. Thakore, learned counsel for the appellant has submitted that the language of section 483 of the Companies Act is much wider than clause 15 of the Letters Patent which confers a right of appeal against a judgment and also much more wider than the language of Order 43 Rule 1 of the Civil Procedure Code which provides for appeal against interlocutory orders. The impugned order vitally affects the rights of the appellant to prosecute the winding up petition filed against the respondent-company, as the learned Company Judge has sought to adjudicate upon the main controversy, the practical effect of which is virtually dismissal of the winding up petition.

13. Having heard the learned counsel for the parties, the Court is not inclined to sustain the preliminary objection raised on behalf of the respondent. As far as the first contention that under section 483 the appeal is not maintainable because the order under appeal is passed before admission of the winding up petition, the contention does not merit any serious consideration. The moment the winding up petition is instituted, it becomes "the matter of winding up of a company." The effective winding up of a company would commence after the final order of winding up is passed by the Court under section 443 of the Act, but that is not the legislative intent in the context of section 483 of the Act because otherwise even an order of admission of a winding up petition and for publication of the advertisement would be non-appealable. The provisions of section 441 (2) of the Act have a bearing on this aspect, since they provide that once the order of winding up is passed, winding up shall be deemed to commence from the time of presentation of the petition for winding up. Hence any order made or decision given after institution of a petition for winding up of a company is an order made or decision given in the matter of a winding up of a company.

14. The learned counsel for the respondent-company relied on the decision of this Court in Niranjan Jayantilal Tolia vs. Official Liquidator 1985 (3) Comp. Law Journal 468 (471) for the purpose of contending that `in the matter' indicates not `incidental to' the winding-up but is `part of' the winding up itself.

That was a case where the question was whether an appeal would lie against a conviction pursuant to the proceedings under section 454 (5A) of the Act for failure

to file statement of affairs. The Court held that section 483 does not include a decision in a prosecution under section 454 (5A) of the Act. That decision was not at all concerned with the question whether an appeal would lie against an order in a winding up petition before its admission.

15. However, the main preliminary contention urged by Mr. Nanavati does merit serious consideration. In Shankarlal Aggarwala vs. Shankarlal Poddar AIR 1965 SC 507, the Apex Court has clearly held that the scope of section 202 of the Indian Companies Act, 1913 (which was in pari-materia with section 483 of the present Companies Act) was much wider than the scope of clause 15 of the Letters Patent. The Apex Court approved the following principles laid down by Chief Justice Chagla of the Bombay High Court in Bachharaj Factories Ltd. vs. Hirji Mills Ltd. AIR 1955 BOM 355.

> "We thus agree with Chagla, C.J. that the second part of the section which refers to "the manner" and "the conditions subject to which appeals may be had" merely regulates the procedure to be followed in the presentation of the appeal and hearing them, the period of limitation within which the appeal is to be presented and the forum to which appeal would lie and does not restrict or impair the substantive right of appeal which has been conferred by the opening words of that section. We also agree with the learned Judges of the Bombay High Court that the words "order or decision" occurring in the 1st part of S. 202 though wide, would exclude merely procedural orders or those which do not affect the rights or liabilities of parties.
>
> (emphasis supplied)

In the aforesaid decision, the Apex Court agreed with the view of the Bombay High Court that the words "order or decision" in section 202 of the Companies At, 1913 were wider than the expression "judgment" in Clause 15 of the Letters Patent.

16. In Shah Babulal Khimji vs. Jayaben AIR 1981 SC 1786, a Bench of three Judges of the Apex Court had an occasion to consider the controversy about the scope of expression "judgment" in Clause 15 of the Letters Patent as there was a sharp difference of opinion amongst various High Courts. One extreme view (i.e. of Rangoon High Court) was that appeal would lie only against a

decree as contemplated by the Code of Civil Procedure. The other extreme view was adopted by Krishnaswamy Ayyar, J. in Tuljaram Row's case (1912 ILR 35 Mad 1) that even an interlocutory judgment which determines some preliminary or subordinate point or plea or settles some step without adjudicating the ultimate right of the parties may amount to a judgment. The Apex Court rejected both the extreme interpretations and held that the correct tests were laid down by Sir White C.J. in Tuljaram Row's case (supra) minus the broader and the wider attributes adumbrated by Sir White C.J. or more explicitly by Krishnaswamy Ayyar, J. The observations of learned Chief Justice Sir Arnold White were analyzed and the Supreme Court laid down the following tests in order to assess the import and definition of the word `judgment' as used in Cl. 15 of the Letters Patent:

"(i) It is not the form of adjudication which is to be seen but its actual effect on the suit or proceeding;

(ii) If, irrespective of the form of the suit or proceeding, the order impugned puts an end to the suit or proceeding it doubtless amounts to a judgment;

(iii) Similarly, the effect of the order, if not complied with, is to terminate the proceedings, the said order would amount to a judgment;

(iv) Any order in an independent proceeding which is ancillary to the suit (not being a step towards judgment) but is designed to render the judgment effective can also be termed as judgment within the meaning of the Letters Patent.

So far as this test is concerned, the learned Chief Justice had in mind orders passed by the Trial Judge granting or refusing ad interim injunction or appointing or refusing to appoint a receiver.

(v) An order may be a judgment even if it does not affect the merits of the suit or proceedings or does not determine any rights in question raised in the suit or proceedings.

(vi) An adjudication based on a refusal to exercise discretion the effect of which is to dispose of the suit, so far as that particular adjudication is concerned, would certainly amount to a

judgment within the meaning of the Letters Patent."

(emphasis supplied)

17. It is in context of the aforesaid controversy about the scope of "judgment" under Cl. 15 of the Letters Patent that the observations made by the Supreme Court in paragraphs 114 and 115 of the judgment in Shah Babulal Khimji vs. Jayaben (supra) are required to be appreciated. It is true that if the question was about appeal against a judgment, the abovequoted observations from Shah Babulal Khimji (supra) would be very relevant. However, as indicated above, the Apex Court has also held in Shankarlal Aggarwal vs. Shankarlal Poddar AIR 1965 SC 507 that for deciding maintainability of an appeal against an order passed by the Company Judge in a matter of winding-up, the scope of expression "judgment" is not relevant as appeal lies against an "order" or a "decision" which would exclude merely procedural orders or those which do not affect the rights or liabilities of the parties.

The important point to be noted here is that while an interlocutory order is to be treated as a judgment when it determines rights of the parties to some extent, an order or decision referred to in section 483 of the Companies Act need not determine any rights or liabilities of the parties but if the order or decision affects the rights or liabilities of the parties, it would be an order other than a mere procedural order and would, therefore, constitute an order or decision against which appeal would lie under sec. 483 of the Act.

18. As regards the decision of the Apex Court in Central Bank of India vs. Gokal Chand AIR 1967 SC 799, there the Court was concerned with the provisions of section 38(1) of the Delhi Rent Control Act, which read as under:

"An appeal shall lie from every order of the Controller made under this Act to the Rent Control Tribunal (hereinafter referred to as the Tribunal) consisting of one person only to be appointed by the Central Government by notification in the Official Gazette."

The Apex Court interpreted the aforesaid provisions in the following words:

The object of s. 38(1) is to give a right of appeal to a party aggrieved by some order which

> affects his right or liability. In the context of s. 38(1), the words "every order of the Controller made under this Act", though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties. In a pending proceeding, the Controller may pass many interlocutory orders under ss. 36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties. The legislature could not have intended that the parties would be harassed with endless expenses and delay by appeals from such procedural orders. It is open to any party to set forth the error, defect or irregularity, if any, in such an order as a ground of objection in his appeal from the final order in the main proceeding.

It is true that Mr. Nanavati heavily relied on the aforesaid observations particularly because there is reference to the orders regarding discovery, production and inspection of documents. However, the Court further added that where the interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties. These observations indicate that when the application for inspection and/or production of documents is granted, that is a step taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding. We are not, however, prepared to go to the extent of saying that these observations would necessarily apply even when the application for inspection/production of documents is rejected by the Company Court.

19. As regards the decision of the Karnataka High Court in M. Manohar & Anr. vs. T.R. Mills Pvt. Ltd. (1997) 88 Company Cases 375, that decision merely

purports to follow the decisions of the Supreme Court in Shankerlal Agarwal (supra) and in Central Bank of India Ltd. vs. Gokalchand (supra). The only reasoning which commended to the Bench of the Karnataka High Court in M. Manohar's case (supra) is that holding that appeals against interlocutory orders would be maintainable would hamper the course of trial before the learned Company Judge and there would not be speedy culmination of litigation at all. We are of the view that this consideration can come into play while examining whether the discretion exercised by the Company Court is required to be interfered with on merits, but that cannot decide the question about maintainability of the appeal under section 483 of the Act.

19.A In the facts of the case before the Karnataka High Court in M.Manohar vs. T.R. Mills Pvt. Ltd. (supra), the learned Company Judge refused permission to a witness to refresh his memory with the help of notes which were permitted to be admitted in evidence, and the Court held that it was a procedural order which did not affect the rights of the party. In our view, even on the basis of the interpretation that we are adopting, appeal would not lie against such an order, as the decision not to permit a witness to refresh his memory with notes cannot be said to be an order affecting the rights of any party. Similarly, the decision of the Karnataka High Court in Metro Malleable Manufacturers (P.) Ltd. vs. Canara Bank & Anr. (1981) 51 Comp. Cases 616, does not carry the respondent-company's case any further as in that case the Court held that the order granting application under Order 1 Rule 10 CPC. for impleading another party in the petition for winding-up cannot be said to be an order affecting the rights of the respondent-company.

20. However, the reasoning given by another Bench of the same Court in Vijaya Bank Employees Housing Cooperative Society Ltd. vs. C. Srinivasa Raju ILR 1990 Kar 2451 commends to us, in so far as the said decision holds that when the order passed by the learned Company Judge affects the rights of a party to the proceedings to adduce evidence to prove the case pleaded by it or defence set-up by it, such an order can be said to affect the right of a party to the proceedings and, therefore, an appeal would lie under section 483 of the Act. Without laying down any general principle that an appeal would always lie against an order refusing an application for the inspection and production of documents, we are of the prima-facie view that while considering the question whether an order affects the

right of a party, if an order refuses an application for inspection and production of documents, such an order has a greater potential for affecting the rights of a party than an order allowing the application for inspection and production of documents. We are, however, not prepared to go to the extent of agreeing with the view of the Madras High Court in T.N. Habib khan vs. Arogya Mary Shanthi Lucien, AIR 1982 Mad 156 wherein it was held that an order admitting documents is appealable since it affects the rights and liabilities of an aggrieved party.

We, of course, agree with the Karnataka High Court speaking through Hon'ble Mr. Justice K.S. Bhat (as his Lordship then was) that it is not possible to understand as to how admitting documents in evidence would affect the rights of the party immediately and why the aggrieved person should not wait till the disposal of the matter and in case the final order goes against the party, he may challenge the earlier order also while challenging the final order.

21. We would like to reiterate that while it is true that an appeal against an interlocutory order should not ordinarily be lightly entertained, that cannot be a relevant factor for taking a decision on the question of maintainability of an appeal under section 483 of the Act. It is true that if at every stage the appellate court entertains appeals against interlocutory orders, there cannot be speedy culmination of litigation at all and it is equally true that to expedite trial and conclusion of a litigation before the trial court, the scope of exercise of appellate jurisdiction under section 483 must be limited.

22. However, as the facts of the instant case demonstrate, what the learned Company Judge has done is not merely to reject an application for inspection and production of certain documents, but the learned Company Judge has rejected the application on the ground that an order for inspection and/or production of these documents cannot be passed unless the petitioning creditor first proves certain facts. The learned Company Judge then held that those preliminary facts were not proved and, therefore, inspection and/or production of the documents cannot be ordered. The findings given by the learned Company Judge that these preliminary facts are not proved virtually amounts to dismissal of the winding up petition for all practical purposes. As explained hereinafter, those documents are not only relevant but they are also vital and go to the root of the dispute between the parties. If inspection and production of those documents

is not granted, valuable rights of the appellant would be affected. Since the appeal under section 483 of the Act is not against the judgment, the test whether the order determines the rights and liabilities of the parties is not to be applied, but the limited test to be applied is whether the order affects any rights or liabilities of the parties. In the context of the facts of the case, we are inclined to hold that the impugned order affects the rights of the appellant and that the very findings given by the learned Company Judge would result into dismissal of the winding-up petition if the documents in question are not produced before the Court. We, therefore, hold that the impugned order passed by the learned Company Judge is an order or decision covered by the provisions of section 483 of the Act and, therefore, the appeal is maintainable.

23. Our decision that an appeal lies under section 483 of the Act against an interlocutory order passed by the learned Company Judge in a winding up petition refusing to grant inspection and production of documents is not meant to be a general principle that the appeal court must entertain such appeals in all cases but in the peculiar facts of this case, as made clear hereinafter, we are holding that the order under appeal affects the rights of the petitioning creditor (who is appellant before us) in the petition for winding up of the respondent-company. We, therefore, hold that the present appeal is maintainable.

24. A perusal of the impugned order indicates that the learned Company Judge required the appellant to prove certain facts before requiring the respondent-company to give inspection of the documents sought for.

24.1 There is considerable substance in the submission made by Mr. Thakore for the appellant that when the respondent-company itself had admitted in its reply that it had obtained inspection of the documents of the appellant-company regarding supply of goods by the appellant to the LGV, there was no warrant for stating that this fact was not before the Court.

24.2 The learned Company Judge has observed that the fact that the LGV in turn had supplied those very goods to the respondent-company is required to be proved.

Now it is the specific case of the appellant that the appellant supplied the goods to the LGV and the LGV in turn supplied those goods to the respondent-company for putting up the refinery plant. The

respondent-company did not contend that it had not received any goods from the appellant. The respondent-company merely stated that the LGV had supplied the materials from various sources and it was not possible for the respondent-company to ascertain whether there were any goods from the appellant.

It was in view of this stand adopted by the respondent-company that the appellant called upon the respondent-company to give inspection of the documents under which the respondent-company had received the goods from the LGV, so that the goods covered by the invoices raised by LGV on the respondent-company could be tallied with the goods covered by the invoices raised by the appellant on the LGV. It cannot, therefore, be said that the documents of which inspection was sought by the appellant were irrelevant to the controversy which is the subject matter of the petition.

24.3 Similarly, when the Deed of Undertaking required the respondent-company to pay the appellant without any protest or demur in case the respondent-company had not paid the amount to the LGV and when it is the case of the respondent-company that it had made payment to the LGV, the documents showing payment by the respondent-company to the LGV are certainly relevant.

25. In view of the above factual aspects, it is clear that the following three documents at items No.(a), (b) and (c) in the prayer clause of Company Application No.127 of 2001 are relevant to the controversy in Company Petition No.265 of 2000 :-

(a) Letter of Credit opened in favour of LGV.

(b) Proof of receipts of goods in India, i.e. Invoices, Bills of Lading, and Bills of Entry.

(c) Extract of Books of Accounts of the Company showing the amounts paid to and yet to be paid to LGV.

Mr. Thakore for the appellant states that the appellant does not press the relief for inspection of item No. (d) i.e. application filed by the respondent-company with the State Government seeking permission under S. 29 of the Wild Life (Protection) Act, 1972 and permission (if any) granted thereunder.

26. The above observations are made with the limited purpose of showing relevance of the aforesaid documents

to the controversy at hand and the extent to which they affect the rights of the petitioning creditor in the pending winding up petition. As and when the matter is heard on merits, the learned Company Judge will be at liberty to decide the matter in accordance with law without being hampered by any observations made by us.

27. In view of the above discussion, we set aside the judgment and order dated 24-4-2001 passed by the learned Company Judge in Company Application No.127 of 2001. We allow the said Company Application and direct the respondent-company to give the appellant inspection of the following documents by 30th October, 2001.

(a) Letter of Credit opened in favour of LGV.

(b) Proof of receipts of goods in India, i.e. Invoices, Bills of Lading, and Bills of Entry.

(c) Extract of Books of Accounts of the Company showing the amounts paid to and yet to be paid to the LGV.

28. The appeal is accordingly allowed to the aforesaid extent with no order as to costs.

29. Since the appeal is disposed of, there shall be no order on the civil application and the same is also disposed of.

(M.S. Shah,J) (D.A. Mehta,J)

zgs/-